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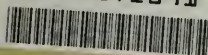
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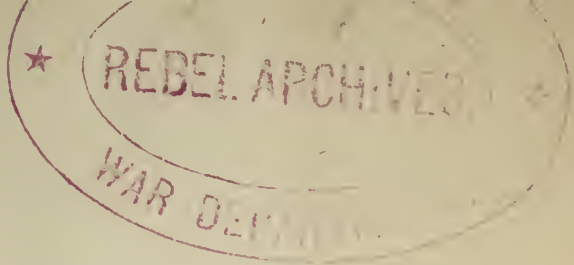
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MESSAGE OF THE PRESIDENT.

RICHMOND, VA., Dec. 16, 1863.

To the House of Representatives :

In response to your resolution of the 10th instant, I herewith transmit, for your information, a communication from the Secretary of War relative to the exemption of mail contractors "under the Act of April 14, 1863," and to the action of the Department upon the subject.

JEFFERSON DAVIS.



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COMMUNICATION FROM SECRETARY OF WAR.

CONFEDERATE STATES OF AMERICA,
War Department.
Richmond, Va., Dec. 14, 1863. }

To the President of the Confederate States:—

SIR: The resolution of the House of Representatives of the Congress of the Confederate States, inquiring whether contractors for carrying the mails of the Confederate States exempt from the performance of military duty in the armies of the Confederate States under the act of April 14, 1862, have been retained in the army and held subject to the performance of military duty since the passage of said act, and if so, upon what ground the same is done, has been referred by you to this Department for reply.

In reply I have to say, that the conscription act of April 16, 1862, is the foundation of the legislation of Congress on the subject of providing for the further defence of the Confederate States. It declares as its cause or motive, "*the exigencies of the country, and the ABSOLUTE NECESSITY of keeping in the service our GALLANT ARMY, and of placing in the field a large ADDITIONAL FORCE to MEET the ADVANCING columns of the ENEMY now invading our soil.*" It enacted "that all persons between the ages of eighteen and thirty-five who are now in the armies of the Confederacy, whose term of service will expire before the end of the war, shall be *continued* in the service for three years from the date of their original enlistment, unless the war shall have sooner ended." It further enacted "that the President might call out and place in the service for three years, unless the war shall have sooner ended, all persons between the ages of eighteen and thirty-five years at the time the call or calls may be made, who are *not legally exempted from military service.*" The only persons who were exempted from military service were those designated in the act of Congress of the 21st of April, 1862, and comprised such persons as are usually exempt from militia duty, with a few additions.

The "exigencies of the service," and "the necessity for keeping our gallant army in the field," and for the addition of reinforcements, were greatly increased by the events of the campaign in the spring, summer, and early part of the autumn of 1862.

The battles before and around Richmond, on the Potomac, and in Maryland, had diminished the strength of the army of Virginia; New Orleans and Memphis had capitulated; western Tennessee, northern Mississippi, and northern Alabama were possessed by the

enemy, and the United States had called for an increase to their army more than half a million of men, and the preliminary proclamation of a general emancipation of the slave population of the Confederacy by the President of the United States had been made, at the time when the Confederate Congress were required to make further provision for the public defence. On the 27th September, 1862, under the dictate of this necessity, the President was authorized by Congress to call out and place in the military service persons between thirty-five and forty-five years of age, who at the date of his call were not legally exempted from military service; and the President, "*during the present war,*" was then vested with the same authority "as to all persons who then were or who might attain the age of eighteen years;" and "when enrolled all persons between the ages of eighteen and forty five were required to serve their full term;" and Congress farther provided that nothing contained in their enactment "shall be understood as repealing or modifying any part of the act of the 16th April, 1862." The act of the 13th October, 1862, was passed to designate the persons who were to be exempted from military service under the presidential call. These acts have been construed by this Department as parts of the same system, and with the object to give full effect to every portion, according to the intention of Congress. It is clear that this exemption act was not intended to discharge from any part of the army the members belonging to it at its date. That portion of the army which had enlisted for the war remained in the service under their contract, to answer the exigencies of the service, and that whose term of service was about to expire was *continued* in the service by the conscription act of April, 1862, under an inexorable "absolute necessity." It is also clear that it did not apply to such as had been legally enrolled for service, "for they were required by the conscription act of September, 1862, to serve their full term." The persons who were to be exempted were those who at the date of the call, or who were claimed for enrollment, were not in the army, and who belonged to the class of exempts as designated by the act of exemption. This construction was adopted by the Department, after mature consideration of the various enactments, and has been applied in its ordinary administration, and in the opinion of the Department this construction is demanded by their language and the motives which induced Congress to adopt them to provide for the public defence.

The act of Congress of April 14, 1863, relative to mail contractors, is an exemption act. The title of the act is similar to that of October 13, 1862, the one being "an act to exempt certain persons from military duty;" the other being "an act to exempt contractors for carrying the mails of the Confederate States, and the drivers of post coaches and hacks, from military service." This Department has not supposed that the act last mentioned was designed to draw any portion of the gallant army from the field, in the face of the declaration that there was "an absolute necessity for its continued employment to resist the invader," in order to carry the mail on routes of ten miles in length, on horse, or to drive post coaches or hacks.

The act of April 14, before mentioned, has been regarded as form-

ing a part of the act of October relative to exemptions, and to be applied to all such persons as were not enlisted or enrolled in the military service previously to its adoption. The Bureau of Conscription, under instructions from the Department, has determined "that the cause of exemption should exist at the time that military service is claimed. If a person otherwise subject to conscription before or at the time of enrollment, claims exemption by reason of being such a mail contractor as is mentioned in the act, exemption must not be refused, even though the contract was obtained since the passage of the act. If the contract is obtained subsequent to the enrollment, the party virtually becomes a member of the army, and a release from service is of the nature of a discharge from the army, which is not contemplated in the act of Congress."

It is proper to state that one or more of the judges of the district courts of the Confederate States, and one or more of the judges of state circuit courts, have decided that the acts of exemption of October and April authorized discharges from the army; and under the act of April, one of these Judges granted discharges to three members of the same company who had taken mail contracts for one mill, one cent, and ten cents, respectively. The advertisements of the Post Office Department have represented the exemption from military service (including a discharge from the army, if enlisted.) as a part of the benefit to be obtained by a contract for carrying the mail. The result has been that a competition among officers and men has, to some extent, been produced, to obtain such contracts, at nominal prices, by which they might abandon the flag of the Confederacy in the hour of its extreme peril, to carry the mail in obscure districts and upon unimportant routes.

Such consequences seem to be too serious to permit the Department to hesitate in the performance of its duty.

It could not regard the opinion of one or of more of the judges of these inferior tribunals as final and authoritative expositions of the statute.

These statutes are especially of an administrative character, and are particularly addressed to the Executive Department for its guidance. The Department has constantly to determine upon the signification of the terms, and to ascertain the intention of Congress. Its opinion on the act of October was fully known, and has been generally acquiesced in, and particularly so by Congress itself.

While, therefore, the Department respects the decisions of the courts as final in the case before it, it does not look to the opinions of the judges of the inferior courts as furnishing the rule of interpretation they must bear in the action of the Department.

The Department has not interfered with any of the soldiers who have been fairly discharged by judicial authority under the construction that the act is applicable to the army, and has not discharged any other soldier from the army who may have obtained mail contracts, in deference to the judicial opinion contained in such judgments. The Department is confirmed in the accuracy of its opinion, by considering the terms of the only act of Congress which has authorized it to

give discharges from the army. This act is entitled "An Act to authorize the discharge of certain civil officers from the military service of the Confederate States," passed 2d April, 1863. It provides that if any officer or soldier shall be elected or appointed to certain offices named, upon furnishing the Secretary of War with evidence of such election or appointment, if an officer, his resignation shall be accepted, and if a non-commissioned officer or private he shall be honorably discharged by the Secretary of War. The distinction made between acts of exemption and acts for the discharge of officers and soldiers from the army, is plainly manifested by comparing the statutes before referred to, and seems to have been fully appreciated by Congress.

Respectfully submitted.

JAMES A. SEDDON.

Secretary of War.

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